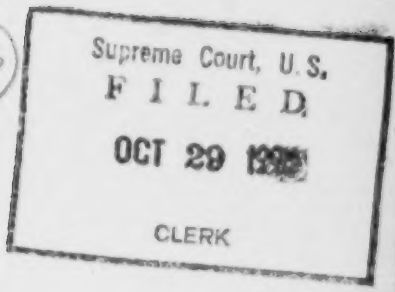

No. 95-2072

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

LUANNE SZENAY
Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,
Respondent,

On Petition For A Writ of Certiorari
To the Michigan Supreme Court

PETITIONER'S REPLY BRIEF

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SUPPLEMENTAL STATEMENT OF THE CASE

A girlfriend of James Blau, Kim Tessin testified that when Blau arrived in Michigan she lent him money until he found a job. (App., p. 9) Tessin also stated that she lent Blau $500 which was used to fly Shawn England back to Florida (App., pp. 9-10). Blau first attempted to borrow money for England's airfare from LuAnne Szenay, but had to finally borrow the money from Kim Tessin. (App., p. 18)

Gary Blau, James Blau's father, testified that before James Blau left Michigan to return to Florida, Gary loaned James over $800 to get James' car repaired, and also loaned James Gary's Texaco credit card for gas money. (App., pp. 11-12)

Robert Wummer, James Blau's employer in Florida, testified that after James Blau had returned to Florida Blau was in financial straits and was sleeping in his car. (App., p. 16) Wummer had already loaned Blau several hundred dollars, and at Wummer's insistence, and in Wummer's presence, Blau called LuAnne Szenay and pleaded with LuAnne to send him some money to help him out. (App., pp. 16-17)

The shotgun used to kill Tim Szenay was sold to Shawn England. (App., p. 4) James Blau borrowed the car used by Blau and England on the night of the murder from Keith Overly. (App., p. 7) After Timothy Szenay had been killed, James Blau called Bret Fultz

and asked him to dispose of the gunbox containing the murder weapon. (App., p. 5)

Prior to the death of Tim Szenay, LuAnne Szenay had filed a Complaint for Divorce, and the Court had issued an Order giving LuAnne Szenay exclusive possession of the Health Nut business pending the outcome of the divorce. (App., p. 30) Melony Szenay, the daughter of Tim Szenay and the stepdaughter of LuAnne Szenay, testified that Tim and LuAnne Szenay were often arguing and fighting, and that in one instance Tim Szenay had LuAnne Szenay by the throat and was holding her against the wall. (App., p. 8) Detective Overstreet testified that when he advised LuAnne Szenay of the death of Tim Szenay, "her demeanor was that of a concerned wife, but not of a person that had knowledge that her husband was dead." (App., p. 29) Detective Overstreet also testified that LuAnne Szenay had advised him that she had left the marital home because she had been abused and that she was "almost living in secret." (App., p. 29)

While working for the Health Nut, James Blau was stopped and accosted by Tim Szenay while Blau was driving the Health Nut van with Tim Szenay yelling at him for driving the van. (App., pp. 5-6) James Blau told his friend Bret Fultz that he hated Tim Szenay, and also told Fultz that he was not having a sexual relationship with LuAnne Szenay. (App., p. 5)

Bonnie Banaszak, an employee of the Health Nut, testified that James Blau said he wished Tim

Szenay would come into the store "and throw a punch at him so that he could kill him and split the insurance money with LuAnne." (App., pp. 27-28)

After Blau returned to Florida, a private investigator, Donald Santini, struck up a relationship with Blau. Blau gave many different accounts of the actual shooting, and on one occasion claimed to have been the one doing the shooting, and kept changing the way he described the events. (App., p. 20) Blau also stated that there were "some brothers" involved in the killing. (App., p. 21) Blau also made statements to Santini that he wanted cocaine badly. (App., p. 20), Santini called Blau a "coke freak." (App., p. 22) Blau bragged about his drug dealing, stated that he was involved in the occult, that he had sacrificed animals, and that he had been at one ceremony were they had sacrificed a human. (App., p. 21) Blau admitted to reading a satanic bible found in his car (App., pp. 26, 32)

Blau told Santini that he "gets off" watching somebody beg for their life (App., p. 20), and at the scene of the shooting of Tim Szenay, Blau stated "blood was all over the fuckin' place" and that Blau "was tryin' to find his eyeballs." (App., p. 22) Blau, in describing his relationship "with the lady up north" said "he was screwin' her", and that "this guy beat her up all the time" and he was her bodyguard. (App., pp. 22-23) At trial Blau denied a sexual relationship with Szenay. (App., p. 25)

Blau also made statements after he had returned to Florida, that he wanted to be a cocaine dealer, and that while he was in Michigan he was a cocaine dealer. (App., p. 19) James Blau told Ginger Zerod, that there was a large quantity of cocaine in the house where Tim Szenay was killed. (App., p. 24) James Blau's mother, Joanne Blau, testified that James Blau was kicked out of the house in the tenth grade at age 17 because he was selling drugs. (App., p. 13)

Todd Porter, who was in jail with James Blau, testified that Blau told him that "he was going to make sure he wasn't gonna spend the rest of his life in prison," and that "he would just about do anything" to avoid spending the rest of his life in prison. (App., p. 32) Blau never indicated that LuAnne Szenay was involved in the killing. (App., p. 33)

Susan Szenay, the sister of Tim Szenay, testified that during the investigation she advised the police that they should check out the husband of the lady Tim Szenay was having an affair with. (App., p. 1) Susan Szenay also testified that during the investigation an informant had advised the police that Susan Szenay had hired someone to kill Tim Szenay. (App., p. 1) Sue Szenay also testified that in her same conversation with LuAnne Szenay relating to LuAnne's "vision" or her "fantasy" (App., p. 2), LuAnne confided to Sue Szenay that she was disappointed with Tim Szenay's behavior, including the affairs he was having with several woman and his drug use at home. (App., pp. 2-3).

The trial attorney for LuAnne Szenay did not make any opening statement (App., p. 31), and did not call any witnesses. (App., pp. 31, 34)

ARGUMENT

Non-testifying, co-Defendant England's tape recorded confession implicated LuAnne Szenay repeatedly. (Petition for Writ of Certiorari, App., pp. 56-58) England's statement was an essential component of the prosecutor's case, and its admission was not harmless error.

England's statement, presented to the jury both in Detective Harkens' testimony recounting England's statement, and in playing England's tape recorded statement to the jury (App., pp. 15, 39), was badly needed by the prosecution to bolster Blau's testimony. Blau's credibility and character were seriously impeached at trial. Blau told undercover Detective Santini that he was the one firing the shotgun which killed Tim Szenay, whereas at trial he testified that England had fired the shotgun. Blau was described as a "coke freak" who tried to convince Santini that he was a coke dealer both in Michigan and Florida. Blau made statements that he was involved in the occult, that he sacrificed animals, and that he was at a ceremony where they sacrificed a human. At one point Blau claimed that there were "some brothers" involved in the murder. (App., pp. 20-23) Blau either lived in a fantasy world or was a compulsive liar.

At the time James Blau was hired at the Health Nut health store, LuAnne Szenay was in the process of obtaining a divorce from Tim Szenay. Tim Szenay had abused LuAnne Szenay, at least one time in the presence of his daughter, had had numerous affairs during the marriage, and was a drug user. The divorce court had awarded LuAnne Szenay exclusive control of the Health Nut business during the divorce. While James Blau was employed at the Health Nut, Tim Szenay accosted LuAnne Szenay in the parking lot of her apartment building and kidnapped their daughter. (App., p. 25) While James Blau was driving the Health Nut delivery van he was stopped by Tim Szenay and accosted. Blau told his friend that it really made him mad. (App., pp. 5-6) Health Nut employee Bonnie Banaszak heard Blau make a statement that he wished Tim Szenay would come into the store and start something so he could kill Tim Szenay and he and LuAnne could split the insurance money. (App., pp. 27-28)

Petitioner LuAnne Szenay had a strong defense that this disturbed individual, James Blau, took it upon himself to "save" LuAnne Szenay by killing Tim Szenay, and settling a personal grudge with Tim Szenay in the same stroke. Unfortunately, LuAnne Szenay's trial attorney did not make an opening statement or call any witnesses on behalf of his client to develop this or any other defense.

Before a federal constitutional error can be held harmless, the Court must be able to declare a belief that it was harmless beyond a reasonable doubt. **Chapman v. California**, 386 U.S. 18, 24; 87 S.Ct. 824, 828; 17 L.Ed.2d 705 (1967). In determining whether an error was harmless the court must assess the probable impact of the confession on the minds of the average jury. **Harrington v. California**, 395 U.S. 250, 254; 89 S.Ct. 1726, 1728; 23 L.Ed.2d 284 (1969) In **Harrington** this court was careful to note that it was not diluting **Chapman** by inference, and also noted that tainted cumulative evidence is not necessarily harmless. **Idem.** For error to be harmless, it must have made **no** contribution to a criminal conviction. **Chapman v. California**, 386 U.S. at 26, S.Ct. at 829.

Denial of cross-examination is "constitutional error of the first magnitude and no amount of showing of want of prejudice would cure." **Davis v. Alaska**, 415 U.S. 308, 318; 94 S.Ct. 1105; 39 L.Ed.2d 547 (1974). Denial of the opportunity to impeach a witness for bias is subject to the **Chapman** analysis of harmless error beyond a reasonable doubt. **Delaware v. VanArsdale**, 475 U.S. 673, 684; 106 S.Ct. 1431, 1438; 89 L.Ed.2d 674 (1986)

Reversal is required if there is a reasonable possibility the evidence complained of contributed to the conviction. **Yates v. Evatt**, 500 U.S. 391, 403; 111 S.Ct. 1884, 1892; 114 L.Ed.2d 432 (1991). For error not to contribute to the verdict is to find the error unimportant

in relation to everything else the jury considered on the issue in question. **Yates v. Evatt**, 500 U.S. at 403; 111 S.Ct. at 1893. Since the jury requested to hear the tape recording of England's statement replayed during deliberation, the error cannot be considered unimportant in relation to the other evidence.

The evidence against Petitioner Szenay was not overwhelming. The only direct evidence against Szenay was the plea-bargained testimony of James Blau, (App., pp. 25-26, 32). Blau and England took every action in preparing for the murder, from the purchase of the shotgun, to the borrowing of the car used. LuAnne Szenay had no connection in these matters. Although Blau fantasized that he was going to get money from LuAnne Szenay, he borrowed money from his girlfriend, both before and after the killing, and borrowed money and a gasoline credit card from his father. Although Blau said he expected LuAnne Szenay to leave him money in a brown Chevette, in fact, no money was left there. (Brief in Opposition, App., p. 14)

The $1,000, mailed to Blau in Florida was mailed after Blau called LuAnne Szenay in the presence of his employer, Robert Wummer, and pleaded for money on the basis that he owed his employer several hundred dollars, and that he was destitute and sleeping in his car. The $1,000 is evidence of charity for an acquaintance who is down on his luck, and had been friendly and supportive to LuAnne Szenay. The evidence of Szenay's contact with Blau after the killing

is incriminating only in light of Blau's self-serving explanations.

It would be unusual for a wife with a minor child going through a tumultuous divorce not to call her insurance agent to confirm that her abusive husband had not canceled their health and life insurance.

Blau's testimony needed corroboration from another witness. The prosecutor's closing argument (App., pp. 35-36) and rebuttal argument (App., p. 37) asserts that Blau's testimony is corroborated by Shawn England's tape recorded statement, which implicates LuAnne Szenay. During deliberation the jury requested to have England's tape recorded statement played (App., p. 39) Not only is there a reasonable possibility that England's statement contributed to Szenay's conviction, it is inconceivable that the jury did not rely on England's statement in convicting Szenay.

Although the jury was instructed that Szenay's statements could only be used as evidence against co-Defendant England, the jury was not instructed that England's statements could not be used against Szenay. (App., p. 38) **Richardson v. Marsh**, 481 U.S. 200, 206-207; 107 S.Ct. 1702, 1707; 95 L.Ed.2d 176 (1987) held that **Bruton v. United States**, 391 U.S. 123; 88 S.Ct. 1620; 20 L.Ed.2d 476 (1968), "recognized a narrow exception" to the principle that jurors follow their instructions not to consider a co-defendant's statement against the defendant. Here, England's statement

directly implicated Szenay, and the instructions allowed the jury to use England's statement against Szenay.

Unlike **Brown v. United States**, 411 U.S. 223; 93 S.Ct. 1565; 36 L.Ed.2d 208 (1973), Petitioner Szenay made no confession implicating herself in any conspiracy, nor were there any photographs of Szenay in the actual commission of the offense. Unlike **Harrington v. California, supra**, Petitioner Szenay made no statement placing herself at the scene of the crime, nor were there any other witnesses beside the co-defendants identifying Szenay as an active participant. In **Schneble v. Florida**, 405 U.S. 432; 92 S.Ct. 1056; 31 L.Ed.2d 340 (1992) , the petitioner's confession that he had strangled the victim was consistent with the objective evidence, including the rope burns on petitioner's hands. The statement of the co-Defendant merely corroborated details of petitioner comprehensive confession. **Idem**, 405 U.S. at pp. 430-431; 92 S.Ct. at p. 1058.

The prosecutor's reply brief argues that England's tape recorded statement parallels Blau's testimony and is therefore cumulative. It can be assumed that Blau heard England's statement prior to his testimony and could thus manufacture this consistency. The inability to cross-examine England perpetuated this manufactured consistency.

Respectfully submitted.

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Attorney for Petitioner

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APPENDIX A

Testimony of Susan Szenay

* * *

[p. 216] Q Having--having suggested to the investigating officer that, look, I--I think you better--you better check out the husband of this lady by the name of Sherrie Edwards because Tim Szenay was having a--an affair with her, this married lady, and it may be--it may have been her husband you see, that may have done him in? Isn't--isn't that what you told the police?

A Well, we were, you know, yes, I had--

Q Okay.

A --that--

Q All right.

A --conversation.

* * *

[p. 217] A It was brought to my attention that John Brault, an informant, turned him in as for Sue Szenay hired him to kill Tim Szenay.

* * *

[p. 222] Q Now as it turned out, you--you felt that whatever discussion you might have had with John was misunderstood by him and that's what you told the police isn't it?

A Yes, Sir.

Q You said, now I had this discussion with John, and indeed [p. 223] it was about my--my relative, Ron. But John got the wrong impression, jumped to the

wrong conclusion and I really didn't intend to have John kill him, I just wanted you to knock him out.

MR. KELLY: Your Honor, I'm--

Q Did you say that?

* * *

Q Well, in any case, so much for that conversation that you had with the police. But you had that conversation and sometime thereafter the conversation terminated and you went on home, is that right?

A Yes, Sir.

Q Okay. And you felt a little better about the focus of this investigation having been on you after you had a chance to get that off your chest?

A The--everything was aired--

* * *

[p. 227] Q Now, was that an accurate description of the way she related it to you? I mean, did she relate it to you in terms of it having been a vision of hers?

A It was a fantasy of hers.

* * *

[p. 228] Q --that. Okay. Now during the course of her having confided in you, on many occasions she talked about how disappointed she was in his behavior, didn't she?

A Oh, yea.

Q Okay. Said he was running with Susie, Charlotte, Jane?

A She mentioned that he with seven hundred woman--women--

Q Yes, Ma'am.

A --in one summer.

* * *

[p. 229] Q Ma'am, didn't she tell you that she was constrained to take leave of her own house because her husband was there with other men using drugs and that she felt that for her own safety and protection, that she needed to get out of the house when they were doing it? That's what she said, isn't it?

A No, Sir. I begged her to leave that house if that was really happening for her safety of her--

Q Well, what--

A --and Jennifer.

* * *

APPENDIX B

Testimony of Frederick Austin

* * *

[p.98] Q Sir, do you recall that particular shotgun?

A Ah, not in that condition.

Q Okay. Well, maybe that's answering my question kinda backwards. Do you re-recall the way the sho--do you recall when--what the shotgun looked like when you sold it?

A It would be as a ordinary shotgun. If I may say, we wouldn't--

* * *

Q Okay. Okay. And the--the Exhibits No. 74 and 75 indicate [p. 99] the buyer to be whom, Sir? You need to--

* * *

A Shawn M. England.

* * *

Q Thank you. Sir, on the items 74 and 75, does it indicate a date of purchase of that particular weapon?

A On 1-17 of '90.

* * *

APPENDIX C

Testimony of Bret Fultz

* * *

[p.140] AYea, uhm, Jim called me and said he was on his way to Florida and his car was all loaded up, asked me if I'd do him a favor and he said, go out to his parents house, there's a box out there, pick it up--

* * *

[p. 141] A Okay. I went over to his parents house, picked up the box he--he said--

Q Not--not what he said, but you just did what?

A Okay. I picked it up, put it in my car, I was going back to my house, I was looking on the box and on the box it said that it was a 22 semi-automatic and I knew that in this case supposedly a shotgun had been used, but seeing that this was a gun box I got scared.

* * *

[p. 208] Q In fact, you asked him whether or not he was having a relationship, meaning a sexual, intimate relationship with her; and he indicated that he wasn't, didn't he?

A That's correct.

Q But he said that he hated her husband.

A Uhm, his statement was--that was, this was at another time.

* * *

[p. 210] Q state--okay. And that was in relation to an incident that took place where Tim [Szenay]

apparently had made contact with Jim Blau when Jim was driving the company van.

A Correct.

Q Okay. What--what was that statement if you can recall that Jim made?

A Uhm, Jim said that Tim stopped him and started yelling at him and--for, you know, why are you driving my van? Do you know that I own that store? Statements to that effect. And Jim said, you know, that it really made him mad that, you know, he really couldn't say anything back to the guy, you know, he didn't know what--quite sure what was going on.

* * *

APPENDIX D

Testimony of Keith Overly

* * *

[p.215] Q I wanta turn your attention to a Thursday night in January of 1990, do you recall a time when Jim Blau borrowed your car, Sir?

A Yes, Sir.

Q And why did you let Jim Blau borrow your car?

A He had car trouble with his, the motor was blown out of [p. 216] his car.

Q And sometime later that day or evening, did he return your car keys to you?

A Yes, Sir.

* * *

APPENDIX E

Testimony of Melony Szenay

* * *

[p. 249] Q Okay. And did you not tell the police that in addition to your having suggested that LuAnne told you that your--your dad may not live until June when you graduate because of his involvement in drugs, did you not also tell them that every day your father was having an altercation with LuAnne while you were there?

A Ah, arguing, fighting.

Q Yes, ma'am. Didn't you say to them?

A. Not every day, but it was often.

* * *

[p. 250] Q Just a--just a second please. And that sometimes your father would hold LuAnne against the--by the throat against the wall.

A On one occasion, yes, I--he did do that.

* * *

APPENDIX F

Testimony of Kim Tessin

* * *

[p. 151] Now do you recall a time last year when Jim [Blau]came back from school in Florida?

A Yes.

Q Do you remember approximately when that was?

A Beginning of December.

Q And when Jim came back, did he have a job right away here in town, or in Midland?

A Not right away, no.

Q And did you about that time lend him or give him some money?

A Yes.

Q Did he, shortly after that, get a job?

A Yes.

Q Okay. Where was that, do you know?

A Well he got two of 'em.

Q Okay. Where--do you know where he got jobs?

A One was at the Health Nut in Bay City and one was at the Rockin' Roundup in Midland.

* * *

[p. 154] Q Can you tell us where you took Shawn [England] ?

A I took Shawn to the airport - Tri-City.

Q That day, did you lend Jim any money?

A Yes.

Q How much, do you know?
A Five hundred.
Q Five hundred dollars?
A Yes.
Q Did you give that money to Jim?
A No.
Q Who did you give it to?
A Shawn.
Q Where did you get the money?
A Comerica Bank.

* * *

APPENDIX G

Testimony of Gary Blau

* * *

[p. 218] Q All right. Now do you recall when Jim left to go back to Florida, approximately when that was?

A I don't know the exact dates. I should probably check these things cause I have a pretty big bill the day he left so--

Q And how was that?

A Well, his car was--he was continually having a problem with his car and the minute his car was fixed he left, so I have a--a car bill from that day.

Q Okay. So you helped him out with paying for his car repair?

A Yea.

* * *

[p. 225] A I had to get his car fixed.

Q How much did that cost?

A I--I can't tell you the exact numbers.

Q Was it over eight hundred dollars?

A I think so, yes.

Q All right. And did you also have to give him some money?

A Yes, I gave him some money.

Q How much did you give him?

A I'm trying to--

Q Yea.

A --probably four or five hundred dollars.

Q Okay. Anything else?

A Yes, I gave him my Texaco card--

Q Okay.

A --so he could get gas.

* * *

[p. 226] Q But you're satisfied that--are you satisfied that the money that you gave him he needed?

A I felt he needed it, yes.

* * *

[p. 227] Q Did he tell you he had enough money for gas?

A He told me he didn't have enough money for gas.

* * *

APPENDIX H

Testimony of Joanne Blau

* * *

[p. 237] But one of the reasons that Mr. [James] Blau was removed from the home was with his involvement in the selling of drugs, isn't that correct?

A Yes.

Q Okay. And how old was he at that time?

A He was in tenth grade.

Q Okay. Would he have been then 16 or 17?

A Seventeen, uh-hm.

* * *

[p. 243] Q Ma'am, I--I know that, from the report, that in the course of your discussion with the police, you told him that you had contemplated the--the possibility that Jim Blau may have been responsible for the murder of Timothy Szenay as soon as you heard about it, isn't that correct?

* * *

A --I said that.

Q Now, would you tell us whey you jumped to that conclusion.

A When Jim came back from the Security Guard School he was very changed.

* * *

[p. 244] A Well, he told me about some of the classes he took and some of the things that they taught him, you know, how--as a security guard, you know, on the defense, and I guess that--and then when he took

the job as a bouncer at the Round-Up in Midland, you know, he would tell me about his experiences there and it just wasn't the Jim that I knew.

* * *

APPENDIX I

Recorded Statement of Shawn England played for Jury

* * *

[p. 255] Q Detective Overstreet, I'm--or excuse me. Detective Harken, I'm gonna hand you what's been marked as People's Proposed Exhibit No. 106, do you recognize that item, Sir?

(Proposed PX#106 shown to witness)

A This appears to be a tape that--that we--we made on this same day after this interview that I just talked about.

* * *

[p. 257] Q Okay. And who is speaking on the tape?

A Shawn England is speaking, Detective Overstreet . . .

* * *

[p. 258] (PX#106 Received at 4:27 p.m.)

MR. KELLY: Your Honor, we'd now ask that we'd be able to play this tape to the jury. We have a small cassette recorder available here to plug in if we may.

THE COURT: All right. We're gonna play that now

* * *

The recording record now, you may--would you please state the tape.

(Off record from 4:29 p.m. to 4:56 p.m. while PX#106, Cassette tape is played)

* * *

APPENDIX J

Testimony of Robert C. Wummer

* * *

[p. 109] Q Mr. Wummer, I understand you dialed the--the call that was directed to someplace in Michigan for Jim Blau, is that correct?

A That's correct.

* * *

Q Now you realize that he was in rather desperate financial straits, you knew that, didn't you?

A I did.

* * *

Q Been known to sleep in his car--

A Yes.

Q --because he had no place to stay. [p. 110] You stood there while he engaged whoever it was on the other end of the--of the phone in conversation and during which time he related to them how desperate he was for--for funds, isn't that correct?

A Correct.

Q He had discussed with you the fact that his father had sent him money, given him money, all that was gone, and did he not tell you that if you would initiate this call for him, that he could perhaps get some money from that person - the person that you--that you were calling for him? He co--led you to believe that look, I--I can get some--they'll send me some money, isn't that correct?

A The last part is correct.

Q Okay. And he needed the money because you had expanded some--some funds on his behalf, I think you indicate a hundred and fifty here, a hundred bucks there; but in any case, he was kinda into you, wasn't he?

A Yes.

Q So you stood there while he pleaded to whoever it was to send him some money. Isn't that right?

A Yes.

* * *

APPENDIX K

Testimony of Robert C. Harken

* * *

[p. 246] A Said the next morning they were at Jim Blau's father's house. He mentioned that Jim was trying to get some money for him to get out of town and that Jim had a conversation with LuAnne that morning.

Q Let me--

A I rem--I remember him [Shawn England] saying that Jim contacted a girl friend by the name of Kim who came to the house and then Jim wanted to spend some time with Kim alone that morning so Shawn went outside and then eventually Kim handed Shawn five hundred dollars. Apparently Kim worked at the airport and then Kim used that money, or I'm sorry, Shawn used that money to catch a flight to Detroit and then [p. 247] back to Florida.

* * *

Volume XIII

[p. 59] Q Okay. Did you have information that Timothy Szenay was [p. 60] involved in drug dealing?

A Yes.

* * *

APPENDIX L

Testimony of John Florio

* * *

[p. 158] Q Okay. Does that refresh your recollection that, in fact, James Blau did tell you that he was a dealer in cocaine?

A Um, well, actually, he--it's a little different. He wanted to be a dealer.

* * *

[p. 159] A At the time, he was not a drug dealer. He did want to get into the business.

* * *

Q Blau, during your conversation with him, indicating that while he, Blau, was in Michigan, he was a cocaine dealer?

A Okay, yes, that's correct?

* * *

[p. 161] Q Now, with regards to your conversations - you had two conversations with Blau; is that right?

A On two separate occasions.

Q Yes. One on the 22nd of February and one on the 24th of February.

A That's right.

Q And on the first of those indications, he was smoking marijuana; is that correct?

A Yes.

* * *

APPENDIX M

Testimony of Donald P. Santini, Sr.

* * *

[p. 170] Q But he [James Blau] indicated that he was the one doing the shooting.

A At first.

Q During the first statement.

A At first.

* * *

[p. 171] Q The second day, you asked him a question, "I thought you said you blew his head off"; you asked him that question, right?

A Yes, sir.

Q And you said that you asked him that question because he was kind of changing the way he was describing the events.

A Yes, sir.

Q And then he gave you another, altered, version of what had happened during the shooting?

A Yes, sir.

Q Blau told you that he gets off on watching somebody die and beg for their life, didn't he?

A Yes, sir.

* * *

[p. 172] Q Now, during your conversations with Mr. Blau, he told you that he wanted some cocaine badly, didn't he?

A He brought it up.

* * *

[p. 173] Q During the conversation, Mr. Blau was talking about some brothers that were involved in this; is that correct?

* * *

A Yeah, okay.--

* * *

Q So there were some brothers involved in this whole thing; is that right?

A That's the what he made me ~~to believe~~.

* * *

[p. 176] Q Now, during the course of this pot-smoking discussion - and I don't say that disparagingly to you--

A Mmhmm.

Q --he started talkin' about killin' people, killin' animals, sacrificing people; the occult, didn't he?

A A little bit, yes.

Q You said, "Gosh, this guy's a crazy!"

A I said he was sick.

* * *

Q Yes, right! And you continued to engage him, and he continued to talk about things such as drug dealing. He bragged about drug dealing and--and he talked about the occult; and he said how he sacrificed animals when he was--at one ceremony where they sacrificed a human.-- [p. 177]

A Yes.

Q --And you said, "Wow!" Kept him goin'; he continued to talk, didn't he?

A Yes, sir.

Q And then when he started talking about this--this crime that he had admitted to you that he had committed, he explained it in vivid detail. And he gave you his personal reaction to the death of this man.

A Yes.

Q And he-he told you that he said it was really neat. That's what he said, it was really neat; he said blood was all over the - pardon the --the expletive - he said, "Blood was all over the fuckin' place." It was dark. He said, "I was lookin', I was tryin' to find his eyeballs."

A He exaggerated a lot, but yes,--

* * *

[p. 178] Q And he said that if anybody ratted on him or told on him or anybody involved themselves in trying to convey this information to the authorities, he'd kill 'em.

A Yes, sir.

Q You said he was a coke freak, didn't you?

A I did make that statement, but I never seen him do it.

* * *

[p. 181] Q --white hair. Okay. And he said, "Look, I have one more question." And he asked you to give him your impression of Jim Blau's relationship with the lady up north, there.

A Yes, sir.

Q And you said, "Oh, yeah," You said they screwed, he said? He said, yeah, they--he was screwin' her; and, [p. 182] yeah, he really liked her; and she really got treated shitty - your words - by this guy and this guy beat her up all the time and everything else; and he was her bodyguard. That's the way you--you said that he descri--

A That's the way--

Q --and that's the--

A --he explained it to me.

* * *

APPENDIX N

Testimony of Ginger Zerod

* * *

[p. 119] Q And Mr. Blau told you, during your discussion about criminal activity on January 18th, that at the house where the activity occurred, he found a large quantity of cocaine in the house;--

A Yes.

* * *

[p. 122] THE WITNESS: He said that they had found a large amount of cocaine in the house, and that he wasn't sure whether he should take any of it or not. Um, he said he left it untouched because he didn't want to disturb anything in the house.

* * *

APPENDIX O

Testimony of James Blau

* * *

Volume XI

[p. 134] A She explained to me that she was attacked in the parking lot by Tim, and that she maced him, and he attacked her some more; and eventually, she got into the apartment [p. 135] complex and locked the door. And Tim left with his--with her daughter.

* * *

[p. 163] A I grabbed Timothy from the window, I pulled him away from the window, I had my hands on his hips, and I--I spun him around and I pushed him into the kitchen. And then I pushed him down, and--and Shawn came over from around his back and shot him.

* * *

Volume XII

[p. 38] Q Did you have a--a dating relationship?

A No, we didn't.

Q Did you have a sexual relationship with her [LuAnne Szenay]? [p. 39]

A No, we didn't.

* * *

[p. 68] Q And part of the agreement that was read by the prosecutor indicates that the first-degree murder charges, the life in prison without parole, that those first-degree charges would only be dismissed after sentencing; is that correct? What he said is correct

about when the [p. 69] first-degree charges would be dismissed?

A Correct.

Q Okay. You haven't been sentenced yet; is that correct;

A Correct.

* * *

[p. 70] Q But the prosecutor asked that the sentence be adjourned, that's your understanding; isn't that correct?

A Yes, sir.

* * *

[p. 184] Q At the time you were arrested, drawing your attention to proposed Exhibit Number 115 [satanic bible], this was found in your car, was it not? [p. 185]

A Yes.

Q In fact, this was found at the right hand driver's--right by the--the pa--the driver's side on the right hand, is-er, on the left hand; is that correct?

A Yes. I had been readin' that.

* * *

APPENDIX P

Testimony of Bonnie Banaszak

* * *

Volume XII

[p. 115] Q --who in--and Sergeant Harken wrote in his police report that you told him that Blau responded, after, apparently a phone call or something like that, "that Blau responded that he wished Tim would come into the store and start something so he could kill him and he and LuAnne could split the insurance money. Bonnie advises this was said several weeks before the homicide."

You're aware that that's in the police report, are you not?

A. Yes.

* * *

[p. 117] BY MR. KELLY:

Q Do you recall the statement itself being made by Jim Blau to you at the store? Do you recall those words that he said to you, he wished Tim would come into the store and start something so he could kill him, and he and LuAnne could split the insurance money; do you recall those words being said to you by Jim Blau?

A Yes.

* * *

Volume XIII

[p. 52] Q What did Mr. Blau say to you several weeks before January 18th, 1990?

A He said he wished that Tim would walk through the door and throw a punch at him so that he could kill him and split the insurance money with LuAnne.

* * *

APPENDIX Q

Testimony of John Overstreet

* * *

[p. 9] Q Now, you also said that when you revealed to her that her husband had been killed, you say this, and I quote: "It was the officer's opinion that her demeanor was that of a concerned wife, but not of a person that had knowledge that her husband was dead." Now, those are your words.

A That's correct.

* * *

[p. 10] A Yes.

Q And she told you that she had left the marital home because she had been abused and that the only way that she could get out of the home was for--during a period of time in which he was absent, for the people from the church and her friends to just simply help her get her stuff and get away; and that she was almost living in secret; is that correct?

A That's correct.

* * *

APPENDIX R

Stipulation

* * *

[p. 41] MR. KELLY: Thank you. Ladies and gentlemen, there's been a stipulation, an agreement between the parties, to the following matters: First, the-there was a complaint for divorce filed by LuAnne Szenay from Timothy Szenay; and that was filed with the Bay County Clerk's office on November 17, 1989. Secondly, an order was entered in that case regarding the business, giving LuAnne Szenay exclusive possession of it, of the business, pending the outcome of the divorce. And that was signed by the Court on November 28, 1989.

* * *

APPENDIX S

Waiver of Opening Statement by Defense

* * *

[p. 42] THE COURT: All right. Mr. Plachta, do you wish to make an opening statement?

MR. PLACHTA: No, your Honor.

THE COURT: And Mr. Hatchett, do you wish to make an opening statement?

MR. HATCHETT: No, your Honor, I'm ready--we're ready to close.

* * *

APPENDIX T

Testimony of Todd Porter

* * *

[p. 46] Q Okay. Did he [James Blau] indicate anything about his motivations for testifying?

A Well, yes, he did.

Q What did he indicate to you?

A Well, he didn't wanna spend the rest of his life in prison.--

Q Okay.

A --Put it that way, um, he--the way he told me, he was hung no matter what he was doin'; so he was gonna make sure that he wasn't gonna spend the rest of his life in prison.

Q Okay. Did he indicate what, if anything, he would do in order not to spend the rest of his life in prison?

A Well, purty much, he would just about do anything.

* * *

[p. 48] A Well, he--he kinda indicated before that he was kinda into a little bit of devil stuff, I guess.--

Q Okay, what--

A --Because he explained his--he had a Satanic bible,--

Q He had a Satan--

A --from what he told me, you know.

* * *

[p. 50] Q Did you and Mr. Blau ever have a conversation about LuAnne Szenay?

A Yes, on a couple occasions.

Q Okay. Did he ever indicate that she was not involved in this?

A He never really indicated to me that she was involved in anything. The only thing he ever indicated to me, that he was kinda in love with the woman.

* * *

APPENDIX U

Defendant Rests

* * *

[p. 84] THE COURT: All right. Do you wish to offer any proofs at this time, Mr. Hatchett?

(Conference between Mr. Hatchett and defendant Szenay, off record)

MR. HATCHETT: Your Honor, we rest.

* * *

APPENDIX V

Prosecutor's Closing

* * *

[p. 34] On March 1st, 1990, James Blau is arrested in Florida and confesses to the police. On March 2nd, 1990, Shawn England is arrested in Florida; and on the third, he confesses to the police, implicating James Blau and LuAnne Szenay in the murder and conspiracy to commit murder of Timothy Szenay. In his statement to the police, Mr. England gives intimate details of the killing. He says he's to get $15,000 for his part from the insurance money on LuAnne's husband; . . .

* * *

[p. 49] You can see how what Jim Blau says, and most of what Jim Blau sa-has said to you is corroborated by some other piece of evidence or some other witness. For example, the statement by Shawn;

* * *

This murder could easily have gone unsolved, but he couldn't keep quiet. Nor could Shawn after he's talked to by the police.

* * *

[p. 50] Now, let's look at Shawn England for a moment. We've got Shawn England's taped confession to the police; you've heard it in its entirety.

* * *

[p. 51] Shawn told him about a murder in Michigan. He gave details about the killing, including the fact that he and Jim were supposed to receive $30,000;

* * *

[p. 52] But it also fits together with the facts we've heard without Jim, with Jim, and with Shawn's statement;

* * *

APPENDIX W

Prosecutor's Rebuttal Argument

* * *

[p. 167] We want you to listen to the tape, too. Look at the detail of his statement. Shawn could have denied everything that the police put to him, but he didn't; he told them about the story. He told them what happened, he told them of his involvement and Jim's involvement; and his belief or his knowledge of LuAnne's involvement.

* * *

APPENDIX X

Jury Instructions

* * *

[p. 16] Defendant LuAnne Szenay's statements, if any, have been admitted as evidence only as to her. And they cannot be used against defendant Shawn England, and you must not do so. You must not consider any such statements in any way when you decide whether defendant Shawn England is guilty or not guilty.

* * *

APPENDIX Y

Jury Deliberations

* * *

[p. 48] THE COURT: All right, we're still outside the [p. 49] presence of the jury. We did receive a note already:

"Could we see and hear England's tape from Florida?"

* * *

[p. 51] (Jury returns to courtroom at 11:12 A.M.)

THE COURT:Please be seated. All right, we've received a note from you:

"Could we please see and hear England's tape from Florida?"

We have that as an exhibit and that can go in with you to the jury room if you wanna listen to it.

* * *